

JOHN RINGHEIM

IBLA 72-334

Decided April 13, 1973

Appeal from decision (M 3-72-1) of District Manager, Miles City, Montana, District Office, Bureau of Land Management, renewing a grazing lease and rejecting a conflicting lease application.

Affirmed as clarified.

Grazing Leases: Apportionment of Land -- Grazing Leases: Preference Right
Grazing Leases: Renewal

Applicants --

A District Manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon regulatory criteria of historical use and proper range management and there are no convincing reasons warranting a change of the lessee.

APPEARANCE: John Ringheim, pro se.

OPINION BY MRS. THOMPSON

John Ringheim has appealed the February 9, 1972, decision of the Miles City, Montana, District Manager, which rejected his application filed December 29, 1971, for a grazing lease for a 160-acre parcel within grazing lease No. 2502069-40, expiring February 28, 1972, in favor of a renewal application by the lessee, Leo DeCock. 1/

Both applications were filed pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970). DeCock's application included the entire 2105.45 acres within his lease. As to the 160 acres in conflict here, both applicants were found to be qualified preference-right applicants, owning deeded land adjoining the federal parcel.

1/ Leo DeCock was not named as an adverse party who must be served with a copy of the appeal. Where there are conflicting applicants for grazing privileges, the applicant who is awarded the privileges should be named as an adverse party so he will be served with the appeal documents and afforded an opportunity to answer if he desires.

After discussing the history and facts relevant to the disputed acreage, the Manager set forth several reasons to renew DeCock's lease and reject Ringheim's application. He noted that the land in question has been leased by DeCock since 1954, and by his predecessors since the early 1940's and is fenced. He indicated reapportionment of the federal lands would not be in the interest of good range management and operator stability unless it would result in better use of the federal land. He found that this would not be the case here. Specifically, he found that Ringheim's proposed use was supplementary, i e., an increase in the size of his existing operation by approximately four cows for four months.

He then discussed the reapportionment of the range, if Ringheim's application were to be allowed, in relation to the topography of the area, the availability of water, and a necessary fence relocation, as follows:

The topography of the area in question is rough break-type country with deep draws. The area lends itself for DeCock's use, as it all drains into his main ranch operation. In order for Ringheim to use the area, his cattle would drop over a divide and into deep draws to graze and then go back up and over the divide to water approximately 1/4 to 1/2 mile away. DeCock's livestock water is approximately the same distance away only just down the draws in the W 1/2 of Section 12.

The present division fence between Ringheim and DeCock is located on the east line, Section 12, T. 5 N., R. 39 E., and is owned by Mr. DeCock. A permit to maintain this fence was issued to Mr. DeCock by the Bureau of Land Management on January 4, 1966. Both parties claim maintenance on the fence as is common on division fences between neighbors. Relocation of the above fence would not result in any better fence location from a management standpoint. The present fence goes across the head of deep draws from north to south, and any relocation to the west would put the fence deeper in the draws and could cause a bottleneck in livestock movement for Mr. DeCock in the rest of this pasture in T. 6 [sic] N., R. 40 E., Sec. 6, W 1/2 and T. 6 [sic] N., R. 39 E., Secs. 1 and 12, W 1/2.

Appellant Ringheim asserts four reasons for his appeal. In the first reason he contends that the use which he expressed in his application is supplementary only "to the effect that a better

location for fence construction and upkeep could be maintained." Ringheim feels that relocation of the fence westward would not, contrary to the Manager's findings, "put the fence deeper in the draws" because "as one progresses Westward the draws and ridges lend themselves to a graduating process of rough break country to an area of notably less hilliness."

Ringheim's second reason follows from this. He alleges that the fence relocation would not cause the bottleneck in livestock movement for DeCock to which the Manager refers. He states:

Existing cow trails show that stock [do] not use trails directly around the northwest corner of the proposed new line, instead they cross this referred to ridge notably further North.

In his third reason, Ringheim contends that the disputed acreage has not been "adequately grazed by DeCock's cattle due to the lack of water supply." He asserts that "[t]rails used by the DeCock stock indicate that its water supply lies in the southeast corner of section 1 (* * * a small inadequate spring) and a reservoir over * * * the divide" [referred to as a ridge in his second reason, above]. These two sources of water lie from 3/4 to 1 1/4 miles away from the disputed quarter section. As for the water sources which the Manager mentioned as being within 1/4 to 1/2 mile away, "just down the draws," Ringheim states that DeCock relies on surface water exclusively in section 12 and though a well exists in the northwest corner of the section, it "had not been used for numerous years." Therefore, he asserts, because DeCock relies on inadequate sources for stock watering in section 12, this disputed acreage has not been fully utilized in the past.

In summation of the first three reasons (better fence location, no hindrance with DeCock's use of other acreage, and the proximity of water), Ringheim attacks the Manager's statement that "[T]he area lends itself for DeCock's use, as it all drains into his main ranch operation." Although he admits that topography supports this statement, he attacks its foundation in the facts. Ringheim asserts that though natural use patterns for cattle might ordinarily be generally downhill to water, if other water sources are more adequate and the supply more stable, though uphill, the natural use patterns will tend to be against otherwise adverse topography.

To support this assertion Ringheim states that "[I]n the past twenty years, DeCock cattle have continually come through the fence and over the divide to water with Ringheim cattle. While Ringheim

cattle have only once been reported on DeCock land." Therefore he implies that good range management would dictate that these 160 acres be leased to him, as a recognition of "natural use patterns."

The allocative factors which a District Manager must consider are set out in 43 CFR 4121.2-1(d)(2). As pertinent here they include: historical use; the general needs of the applicants; proper range management and use of water; topography; and other land use requirements. The allocation may be made on the basis of any or all of the factors set out in the regulation.

As indicated, DeCock and his predecessors have historically held the lease to the disputed acreage. If lands have been held a long time by a lessee and his predecessors but disruptions have resulted in poor range management with non-use of areas, insufficient water development, and abuse of the range, we have recognized that a district manager may properly award a lease to a new applicant who will properly utilize the range rather than renew the existing lease. Douglas V. Livingston, 8 IBLA 61 (1972). However, if proper range management will be served by awarding the lease to either of the two conflicting applicants, it has been held that there should not be a change from the long-time user to a new applicant unless there are convincing reasons to support the change. Victor Powers and Florence Sellers, 5 IBLA 197 (1972).

We find no such reasons. The terrain is such that the fence relocation would add to Ringheim's operation 160 acres on the far side of a divide from the bulk of his contiguous lands. Although Ringheim asserts that natural use patterns, as evidenced by present cattle trails, would be aided and not hindered by such fence relocation, he has not shown this in his appeal. His only offer of proof is a microfilm of an aerial photograph upon which cow trails are at best indistinct. Without better evidence, we find more persuasive the Manager's conclusion that the topography and natural use patterns might result in hindering the movement of DeCock's cattle.

There is not such a history of poor range management practices by DeCock as were involved in Douglas V. Livingston, *supra*. Although appellant contends that DeCock has not fully utilized his land in the past because of inadequate water, the Manager found there was sufficient water on DeCock's property for his livestock and that the land was used. He found no range management objectives to be served by awarding the lease to appellant.

Appellant's primary objection appears to be that DeCock's cattle have trespassed upon his land because of breaks in the fence separating his land from the lands in DeCock's lease. If so, this would

indicate that the lands in the quarter section appellant desires have in fact been used by DeCock. We do not find appellant's statements concerning the topography and natural use patterns persuasive of any change in the use.

As the Manager's decision was predicated upon factors of historical use, topography, and proper range management in accordance with the regulatory criteria, and we find no convincing reason to disturb his decision to award the lease to DeCock rather than appellant, his decision is sustained. Cf. Camp Creek Cattlemen's Association, A-30418 (October 28, 1965). We clarify it in one respect. His award of the lease to DeCock was conditioned upon maintenance of the fence. As appellant's primary objection concerns the trespassing cattle, DeCock should maintain the fence in a manner to prevent such occurrence insofar as possible as a condition to his lease. The decision is so clarified.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as clarified.

Joan B. Thompson, Member

We concur:

Douglas E. Henriques, Member

Frederick Fishman, Member.

